

AMENDED IN ASSEMBLY APRIL 28, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2056**

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**Introduced by Assembly Member Miller**

February 18, 2010

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An act to amend Section 1050 of the Penal Code, relating to criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

AB 2056, as amended, Miller. Criminal procedure: continuance: assault with intent to commit rape.

Under existing law, to continue a hearing in a criminal proceeding specified procedures must be followed. Existing law requires the court in felony cases to set a trial date within 60 days of the defendant's arraignment in superior court except upon a showing of good cause, and prohibits a court from granting a continuance in a criminal proceeding absent a showing of good cause. Existing law defines "good cause" for the purpose of these provisions to include, but not be limited to, cases involving murder, stalking, domestic violence, or a hate crime when the prosecuting attorney has another trial, hearing or motion to suppress in progress.

This bill would provide that the crime of assault with intent to commit ~~rape~~ *a specified sexual offense*, in violation of a specified provision, shall be included in the definition of "good cause," a showing of which is a basis for the granting of a continuance in a criminal proceeding when the prosecution is so engaged.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 1050 of the Penal Code is amended to  
2 read:

3     1050. (a) The welfare of the people of the State of California  
4 requires that all proceedings in criminal cases shall be set for trial  
5 and heard and determined at the earliest possible time. To this end,  
6 the Legislature finds that the criminal courts are becoming  
7 increasingly congested with resulting adverse consequences to the  
8 welfare of the people and the defendant. Excessive continuances  
9 contribute substantially to this congestion and cause substantial  
10 hardship to victims and other witnesses. Continuances also lead  
11 to longer periods of presentence confinement for those defendants  
12 in custody and the concomitant overcrowding and increased  
13 expenses of local jails. It is therefore recognized that the people,  
14 the defendant, and the victims and other witnesses have the right  
15 to an expeditious disposition, and to that end it shall be the duty  
16 of all courts and judicial officers and of all counsel, both for the  
17 prosecution and the defense, to expedite these proceedings to the  
18 greatest degree that is consistent with the ends of justice. In  
19 accordance with this policy, criminal cases shall be given  
20 precedence over, and set for trial and heard without regard to the  
21 pendency of, any civil matters or proceedings. In further accordance  
22 with this policy, death penalty cases in which both the prosecution  
23 and the defense have informed the court that they are prepared to  
24 proceed to trial shall be given precedence over, and set for trial  
25 and heard without regard to the pendency of, other criminal cases  
26 and any civil matters or proceedings, unless the court finds in the  
27 interest of justice that it is not appropriate.

28     (b) To continue any hearing in a criminal proceeding, including  
29 the trial, (1) a written notice shall be filed and served on all parties  
30 to the proceeding at least two court days before the hearing sought  
31 to be continued, together with affidavits or declarations detailing  
32 specific facts showing that a continuance is necessary and (2)  
33 within two court days of learning that he or she has a conflict in  
34 the scheduling of any court hearing, including a trial, an attorney  
35 shall notify the calendar clerk of each court involved, in writing,  
36 indicating which hearing was set first. A party shall not be deemed  
37 to have been served within the meaning of this section until that  
38 party actually has received a copy of the documents to be served,

1 unless the party, after receiving actual notice of the request for  
2 continuance, waives the right to have the documents served in a  
3 timely manner. Regardless of the proponent of the motion, the  
4 prosecuting attorney shall notify the people's witnesses and the  
5 defense attorney shall notify the defense's witnesses of the notice  
6 of motion, the date of the hearing, and the witnesses' right to be  
7 heard by the court.

8 (c) Notwithstanding subdivision (b), a party may make a motion  
9 for a continuance without complying with the requirements of that  
10 subdivision. However, unless the moving party shows good cause  
11 for the failure to comply with those requirements, the court may  
12 impose sanctions as provided in Section 1050.5.

13 (d) When a party makes a motion for a continuance without  
14 complying with the requirements of subdivision (b), the court shall  
15 hold a hearing on whether there is good cause for the failure to  
16 comply with those requirements. At the conclusion of the hearing,  
17 the court shall make a finding whether good cause has been shown  
18 and, if it finds that there is good cause, shall state on the record  
19 the facts proved that justify its finding. A statement of the finding  
20 and a statement of facts proved shall be entered in the minutes. If  
21 the moving party is unable to show good cause for the failure to  
22 give notice, the motion for continuance shall not be granted.

23 (e) Continuances shall be granted only upon a showing of good  
24 cause. Neither the convenience of the parties nor a stipulation of  
25 the parties is in and of itself good cause.

26 (f) At the conclusion of the motion for continuance, the court  
27 shall make a finding whether good cause has been shown and, if  
28 it finds that there is good cause, shall state on the record the facts  
29 proved that justify its finding. A statement of facts proved shall  
30 be entered in the minutes.

31 (g) (1) When deciding whether or not good cause for a  
32 continuance has been shown, the court shall consider the general  
33 convenience and prior commitments of all witnesses, including  
34 peace officers. Both the general convenience and prior  
35 commitments of each witness also shall be considered in selecting  
36 a continuance date if the motion is granted. The facts as to  
37 inconvenience or prior commitments may be offered by the witness  
38 or by a party to the case.

39 (2) For purposes of this section, "good cause" includes, but is  
40 not limited to, those cases involving assault with intent to commit

1 ~~rape a specified sexual offense~~ in violation of Section 220, murder,  
2 as defined in subdivision (a) of Section 187, allegations that  
3 stalking, as defined in Section 646.9, a violation of one or more  
4 of the sections specified in subdivision (a) of Section 11165.1 or  
5 Section 11165.6, or domestic violence as defined in Section 13700,  
6 or a case being handled in the Career Criminal Prosecution Program  
7 pursuant to Sections 999b through 999h, or a hate crime, as defined  
8 in Title 11.6 (commencing with Section 422.6) of Part 1, has  
9 occurred and the prosecuting attorney assigned to the case has  
10 another trial, preliminary hearing, or motion to suppress in progress  
11 in that court or another court. A continuance under this paragraph  
12 shall be limited to a maximum of 10 additional court days.

13 (3) Only one continuance per case may be granted to the people  
14 under this subdivision for cases involving stalking, hate crimes,  
15 or cases handled under the Career Criminal Prosecution Program.  
16 Any continuance granted to the people in a case involving stalking  
17 or handled under the Career Criminal Prosecution Program shall  
18 be for the shortest time possible, not to exceed 10 court days.

19 (h) Upon a showing that the attorney of record at the time of  
20 the defendant's first appearance in the superior court on an  
21 indictment or information is a Member of the Legislature of this  
22 state and that the Legislature is in session or that a legislative  
23 interim committee of which the attorney is a duly appointed  
24 member is meeting or is to meet within the next seven days, the  
25 defendant shall be entitled to a reasonable continuance not to  
26 exceed 30 days.

27 (i) A continuance shall be granted only for that period of time  
28 shown to be necessary by the evidence considered at the hearing  
29 on the motion. Whenever any continuance is granted, the court  
30 shall state on the record the facts proved that justify the length of  
31 the continuance, and those facts shall be entered in the minutes.

32 (j) Whenever it shall appear that any court may be required,  
33 because of the condition of its calendar, to dismiss an action  
34 pursuant to Section 1382, the court must immediately notify the  
35 Chair of the Judicial Council.

36 (k) This section shall not apply when the preliminary  
37 examination is set on a date less than 10 court days from the date  
38 of the defendant's arraignment on the complaint, and the  
39 prosecution or the defendant moves to continue the preliminary

- 1 examination to a date not more than 10 court days from the date
- 2 of the defendant's arraignment on the complaint.
- 3 (l) This section is directory only and does not mandate dismissal
- 4 of an action by its terms.